A

KENNY VALE SDN BHD

v.

KETUA PENGARAH HASIL DALAM NEGERI

B

HIGH COURT MALAYA, KUALA LUMPUR
MOHD ZAWAWI SALLEH J
[CIVIL APPEAL NO: R2-14-05-2010]
19 JANUARY 2011

C ***REVENUE LAW:*** *Income tax - Assessment - Appeal - Applicability of s. 14 of Act A1055 - Correct meaning accorded to word "disposal" in s. 14 - Whether appellant caught by s. 14 following purchase of stock from holding company - Whether respondent correctly imposed penalties under s. 113(2) Income Tax Act 1967*

D

This was the appellant's appeal by way of case stated pursuant to para 34 sch. 5 of the Income Tax Act 1967 ('ITA') against the Deciding Order of the Special Commissioner of Income Tax ('SCIT'). The appeal related to the notices of assessment raised by the respondent for the years of assessment 2002, 2003 and
E 2004. The SCIT held that the additional assessments issued by the respondent on the appellant were correct as s. 14 of the Income Tax (Amendment) Act 1999 ('Act A1055') applied to both the disposer and the acquirer.

F The issues were: (1) whether s. 14 of Act A1055 was applicable to the appellant pursuant to the appellant's purchase of stock from its holding company, TTDB for the year of assessment 2000, and the correct meaning to be accorded to the word "disposal" in s. 14; and (2) whether the respondent had correctly imposed
G penalties on the appellant under s. 113(2) ITA.

Held (dismissing the appeal with costs):

(1) The interpretation to be given to the words should depend
H upon the court's perception of the purpose of the provision rather than on the dictionary meaning. The plain meaning approach to judicial interpretation was not necessarily the most apposite. The words hardly have a meaning in vacuo. Words take on a meaning in association with other words in
I whose context they were used. Therefore, the interpretation of words almost invariably meant doing more than finding mere dictionary, literal or plain meaning. (para 30)

(2) The appellant was incorporated on 5 April 1995 under the name of Rivera Projects Sdn Bhd up to the year 1998. The appellant did not have any fixed assets as its stock. Importantly, the accounting period of the appellant ended on 31 January every year. Further, the sale and purchase agreement dated 25 January 1999 for the sale of lands acquired by TTDB to the appellant did not have any terms regarding payments and was also unsecured. Despite the fact that the purchase was without any terms of payment and conditions, the appellant created a third party charge on behalf of TTDB, the seller, to secure a RM30,000,000 credit facility from OCBC bank with the property as a security. On the facts, it was reasonable to infer that the disposal of the lands from TTDB to the appellant was merely a scheme to alter the tax position of both the appellant and TTDB. That scheme was done by taking advantage of the loophole of the transitional period of the waiver year for the year of assessment 2000. Though on paper, the lands were sold to the appellant, in actual fact TTDB still had full control over the lands. That was evidenced by the fact that a third party charge was created by the appellant on behalf of TTDB to secure a credit facility of RM30,000,000 from OCBC bank. (paras 33-35)

(3) The loophole during the transitional period was the mischief that the Parliament intended to rectify by introducing s. 14 of Act A1055. (para 36)

(4) The SCIT was correct in holding that the appellant failed to adduce any evidence to prove that the appellant's position fell under the proviso of s. 14 of Act A1055 which stated that "unless it can be proven to the satisfaction of the Director General that the disposal was made in the ordinary course of its trade". (para 37)

(5) There was no reason for the appellant to misinterpret s. 14 of Act A1055. The penalties imposed were reasonable and within the limitation prescribed by s. 113(2) ITA 1967. (para 38)

Case(s) referred to:

Broach District Co-operative Cotton Sales and Pressing Society Ltd v. The Commissioners of Income Tax AIR [1989] SC 1493 ***(refd)***

Cape Brandy Syndicate v. IRC [1921] 1 KB 64 ***(refd)***

Director General of Inland Revenue v. Sebangun Sdn Bhd [1997] 1 LNS 270 HC ***(refd)***

Mc Guckian v. IRC [1977] 1 WLR 991 ***(refd)***

Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 CA ***(refd)***

Pepper (Inspector of Taxes) v. Hart [1993] AC 593 ***(refd)***

Russel v. Scott [1948] AC 422 ***(refd)***

State of Karnataka v. Appa Balu Ingale [1995] Supp (4) SCC 469 ***(refd)***

Stenhouse Holdings v. IRC [1972] AC 661 ***(refd)***

Susses Peerage case [1843-1860] All ER 55 ***(refd)***

WT Ramsay Ltd v. IRC [1982] AC 300 ***(refd)***

Yangco v. Court of First Instance of Manila 26 Phil at 1888 (1915) ***(refd)***

Legislation referred to:

Income Tax Act 1967, s. 113(2)
Income Tax (Amendment) Act 1999, s. 14
Interpretation Acts 1948 and 1967, s. 17A

For the appellant - Munir Abdullah; M/s Munir & Co
For the respondent - Ahmad Isyak (Hanem Mohd Ayob with him); Inland Revenue Board Malaysia

Reported by Usha Thiagarajah

JUDGMENT

Mohd Zawawi Salleh J:

[1] This is an appeal by the appellant, by way of Case Stated ("CS") pursuant to para. 34 Schedule 5 of the Income Tax Act 1967 ("ITA"), against the Deciding Order of the Special Commissioner of Income Tax ("SCIT") dated 22 April 2010.

[2] The appeal relates to the notices of assessment raised by the respondent for the Years of Assessment 2002, 2003 and 2004.

[3] The SCIT held that the Additional Assessments issued by the respondent onto the appellant were correct as s. 14 of the Income Tax (Amendment) Act 1999 ("Act A1055") applies to both the disposer and the acquirer on the following reasons:

(a) The word "disposal" under s. 14 of the Act A1055 means "an act of disposing" which refers to an act not a noun;

(b) The provisions of s. 14 of the Act A1055 is clear and ambiguous and therefore the principle of strict interpretation applies; and

(c) If the SCIT were to allow the appeal, it will defeat the true intention of the Parliament in enacting s. 14 of the Act A1055.

Facts Of The Case

[4] Facts admitted and proved before SCIT are as follows:

(a) The appellant was incorporated in Malaysia under the Companies Act 1965 on 5 April 1995.

(b) The principal activity of the appellant is property development as stated in annual reports and financial statement for the financial year ended 31 December 2002.

(c) The appellant has changed its name from Riviera Project Sdn Bhd to Kenny Vale Sdn Bhd on 7 March 2002.

(d) The accounting period of the appellant ends on 31 January 1999 for the year of assessment 2000 (PY).

(e) The exempt period applicable to the appellant in respect of year of assessment 2000 (PY) is from 1 February 1998 to 31 January 1999.

(f) The appellant is a wholly owned subsidiary of Tan & Tan Development Berhad (hereinafter referred to as "TTDB"), a company incorporated in Malaysia.

(g) Both the appellant and TTDB come within the meaning of the phrase "companies in the same group" as stipulated in s. 14 of the Act A1055.

(h) TTDB has acquired the appellant on 7 January 1999 as stated in the member's resolution.

(i) The holding company, TTDB, has acquired lands held under Geran Mukim 1079, Lot 760, Geran Mukim 801 Lot 4006 and Geran Mukim 867 Lot 4104, all in Daerah Kuala Lumpur Wilayah Persekutuan in 1990 (hereinafter referred to as "the property").

(j) The acquisition price of the said lands by TTDB were RM6,492,537.

(k) The said lands has been disposed of by TTDB to the appellant on 25 January 1999 as stated in the Sale and Purchase Agreement dated 25 January 1999 (hereinafter referred to as "the agreement").

(l) The total disposal price of the said lands made by TTDB to the appellant was RM20,000,000.

(m) Under cl. 3.2 of the agreement, the purchase price can be paid by the appellant upon the execution of the agreement or within such time as may be mutually agreed by the parties.

(n) In the account, the amount due to the holding company is unsecured, interest free and has no fixes terms of repayments.

(o) The amount owing to the TTDB by the appellant as stated in the annual reports and financial statements are as follows:

Year of Assessment	Amount Owing
2002	RM19,362,205
2003	RM13,111,429
2004	RM6,734,648
2005	- nil -

(p) On 3 March 2006, the respondent issued Notices of Additional Assessment (Form JA) for the years of assessment 2002, 2003 and 2004.

(q) The appellant filed for an extension of time to file Form Q by way of Form N dated 11 October 2006.

(r) The appellant disagreed and aggrieved with the said assessments, filed notices of appeal in form Q dated 9 February 2007 to the Special Commissioners of Income Tax after the appeal for extension of time to file Form Q was granted. Hence this appeal.

Issues To Be Decided

[5] The issues to be decided by the court are:

(a) whether s. 14 of the Act A1055 is applicable to the appellant pursuant to the appellant's purchase of its stock from TTDB in the years of assessment 2000 (PY), in the manner and to the extent relied on by the respondent; and

(b) whether the respondent has correctly imposed penalties on the appellant under subsection 113(2) of ITA 1967.

Appellant's Submission

[6] The appellant submitted that the SCIT had misconstrued the laws. Section 14 of the Act A1055 is not applicable to the appellant. According to the appellant, s. 14 of the Act A1055 is centered solely on the disposal and the disposer and does not, on a plain and strict construction, relate to an acquisition and the acquirer.

[7] The appellant further submitted that in a sale, one person disposes and the other acquires. The concept of "disposal" relates to the disposer and the concept of acquisition relates to the acquirer. There is on the face of it, no reference in s. 14 of the Act A1055 to acquirer or an acquisition. There is neither rhyme nor reason to conflate the concept of disposal and acquisition. There is only a reference to a disposal and by a natural logical extension, to a disposer. The appellant argued that this is evident as follows:

(a) The person to whom the word "its" (the penultimate word in s. 14), is referring, is clear. It is referring to the disposer.

(b) In order for the proviso to apply, the "disposal" must be "made in the ordinary course of (the disposer's) trade". This is further confirmation that the legislation in using the word "disposal", is only referring to a disposer. An acquirer cannot acquire stock in the course of someone else's trade as would be required if the word "disposal" referred also to the acquisition.

(c) The person to whom the word "cost" is being referred to in s. 14 is again clear. It is the disposer's cost that s. 14 is referring to.

(d) The person in whose hands the asset must represent "stock in trade" is, again, the disposer. Section 14's focus is, it would be noted, throughout on the disposer. The words "disposal", "cost", "stock in trade" and "it", as appearing in s. 14, all relate to a disposer.

(e) Use of the word "between" in s. 14 does not cause the word "disposal" to refer to an acquisition. "Between companies in the same group" is simply shorthand for "by one company in the group to another company in the same group". It would, therefore, be noted that just because a disposal is "between" companies, it cannot be taken to mean that "disposal" includes an acquisition.

Respondent's Submission

[8] The respondent submitted the provision of s. 14 of the Act A1055 applies to both the disposer and acquirer. It is the contention of the respondent that in interpreting s. 14 of the Act A1055, the court must look at the real intention of the Parliament in introducing the said section and what mischief it seeks to redress. According to the appellant, s. 14 of the Act A1055 was placed in Part III of the Act under the heading of "Transitional Provisions". The intention of the Parliament in legislating the said section was to plug the loophole during the transitional period of waiver year. Should the court agrees with the contention of the appellant, then, the intention of the Parliament the plug the loophole of "waiver year" will be defected as the appellant's profit will be lower and the disposer's income from the sale will be exempted.

[9] Further, the Parliament was certainly aware the necessity of s. 14 of the Act A1055 in order to prevent companies from taking advantage of the transitional period by disposing its assets to its related company. According to the appellant, this construction of s. 14 of the Act A1055 finds support from the following observation made by the High Court in the case of *Director General of Inland Revenue v. Sebangun Sdn Bhd* [1997] 1 LNS 270:

> In *Lim Phin Khian v. Kho Su Ming* [1996]1 MLJ 1 the Federal Court said that there is an unrebuttable presumption Parliament is presumed to know at the relevant law upon the particular subject upon which it legislates. The correct approach is to look at the substance amid general purpose of the legislation in order to discover its objective aim or general purpose …

[10] Similarly, the Supreme Court of India in the case of *Broach District Co-operative Cotton Sales and Pressing Society Ltd v. The Commissioners of Income Tax* AIR [1989] SC 1493 took the same approach and held that to achieve the purpose of Parliament in incorporating such exemption clauses, the following comment were made: A B

> … We find ourselves unable to accept the view taken by the High Court … The object of s. 81(i) was to encourage and promote the growth of co-operative societies, and consequently a liberal construction must be given to the operation of that provisions … C

[11] The purposive approach also has long been recognised by the Malaysian laws as part of the rule in interpreting a legislation. Section 17A of the Interpretation Act 1948 and 1967 expressly provides: D

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose of object. E

[12] Section 17A of the Interpretation Act quoted above is in line with the statement made by Tindal CJ when advising the House of Lords in the case of *Susses Peerage* case [1843-1860] All ER 55: F

> The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which according to Chief Justice Dyer, 'is a key to open the minds of the makers of the Act, and the mischief's which they intent to redress'. G H

[13] The appellant urged the court to give effect to the intention of the Parliament by looking at the intention of the Parliament in legislating s. 14 of the Act A1055. If the intention of the said section is ignored, then, it will make the section meaningless. I

Findings Of The Court

[14] The central theme of the submission of both parties is the correct meaning to be accorded to the word "disposal" in s. 14 of the Act A1055. The section reads as follows:

> **Transactions between companies in the same group**
>
> 14.Disposal of stock in trade between companies in the same group shall be treated at cost unless it can be proven to the satisfaction of the Director General that the disposal was made in the ordinary course of its trade.

[15] The SCIT adopted two approaches in interpreting s. 14 of the Act A1055. Firstly, the SCIT adopted the strict interpretation of the said section. The SCIT opined that the provision of s. 14 of the Act A1055 was clear and unambiguous. According to the SCIT, the word "disposal" means "an act of disposing" ie, a verb which refers to an "action" and not a "noun". Therefore, the disposal of stock in trade "between companies in the same group" refers to both companies ie, the company as disposer and the other company as acquirer.

[16] Secondly, the SCIT also adopted purposive approach. According to the SCIT, the purpose of Parliament in enacting s. 14 of the Act A1055 is to seal the loophole during transitional period of waivers year in order to prevent companies from taking advantage of the transitional period by disposing its assets to its related companies.

First Approach

[17] The word "disposal" has not been defined in the Act A1055. When the word is not so defined in the Act, it may be permissible to refer to the dictionary to find out the meaning of that word as it understood in the common parlance. Of course, the word has to be construed in the context of the provision of the section and regard must also be had to the legislative history of the provisions of the Act and the scheme of the Act. It is settled principle of interpretation that the meaning of the words, occurring in the provisions of the Act must take their colour from the context in which they are so used. In other words, for arriving at the true meaning of a word, the said word should not be detached from the context.

[18] Viewed in this light, in the context of the provision of s. 14 of the Act A1055, the court agrees with the opinion expressed by the SCIT that the said section applies to both disposer and acquirer. The word "disposal" refers to an "action" and not a "noun". Dictionary Net defines the word "disposal" as:

> 1. The act of disposing, or disposing of, anything; arrangement; orderly distribution; a putting in order; as, the disposal of the troops in two lines. [1913 Webster]
>
> 2. Ordering; regulation; adjustment; management; government; direction. [1913 Webster]
>
> 3. Regulation of the fate, condition, application, etc., of anything; the transference of anything into new hands, a new place, condition, etc.; alienation, or parting; as, a disposal of property. [1913 Webster]
>
> 4. Power or authority to dispose of, determine the condition of, control, etc., especially in the phrase at, or in, the disposal of. [1913 Webster]".

[19] Oxford Dictionaries Online defines the word "disposal" as:

> 1. The action or process of getting rid of something.
>
> 2. the sale of shares, property, or other assets.
>
> 3. literary the arrangement of something:
>
> She brushed her hair carefully, as if her success lay the sleek disposal of each gleaming black thread.

[20] The *Shorter Oxford English Dictionary*, vol 1, defines the word "disposal" as:

> 1. The act of faculty of disposing
>
> 2. The action of disposing
>
> 3. The action of giving or making over; bestowal; assignment.

[21] It clear, therefore, in the context of s. 14 of the Act A1055, the word "disposal" simply means an act of disposing of stock. The appellant's contention that s. 14 of the Act A1055 only refers to disposal and by extension, to a disposer in the transaction and not to the acquisition of the property by the appellant, cannot hold water.

[22] It is settled that the first duty of a judge is to take and apply a statute as he finds it. Otherwise, as the Supreme Court of the *Philippines in Yangco v. Court of First Instance of Manila* 26 Phil. at 1888 (1915) warned, confusion and uncertainty in application will surely follow, making, this court may add, stability and continuity in the law more difficult to achieve:

> ... [w] here language is plain, subtle refinements which tinge words so as to give them the colour of a particular judicial theory are not only unnecessary but decidedly harmful. That which has caused so much confusion in the law, which has made it so difficult for the public to understand and know what the law is with respect to a given matter, is in considerable measure the unwarranted interference by judicial tribunals with the English language as found in statutes and contracts, cutting the words here and inserting them there, making them fit personal ideas of what the legislature ought to have done or what parties should have agreed upon, giving them meanings which they do not ordinarily have cutting, trimming, fitting, changing and colouring until lawyers themselves are unable to advise their clients as to the meaning of a given statute or contract until it has been submitted to some court for its interpretation and construction.

Second Approach

[23] Until relatively recent times, judges insisted upon a strict approach to the interpretation of taxing statutes. The reason commonly offered for this was that taxing statutes operated in a similar way to penal statutes, and that if a taxpayer is to be charged to tax, this can only be achieved by the giving of very clear authority. As Lord Simonds stated, "The subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax upon him". (see *Russel v. Scott* [1948] AC 422 at 433). A more liberal approach might be seen as undesirably favourable to the executive. The result was summed up succinctly by Rowlatt J in the case of *Cape Brandy Syndicate v. IRC* [1921] 1 KB 64 when he said:

> In a taxing Act one has merely to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

[24] Now, it would appear that there has been a trend to a more purposive approach to the interpretation of tax statutes. In *Mc Guckian v. IRC* [1977] 1 WLR 991, Lord Steyn had this to say at p. 1000:

> The new development was not based on a linguistic analysis of the meaning of particular words in a statute. It was founded on a broad purposive interpretation, giving effect to the intention of Parliament …

[25] In *Stenhouse Holdings v. IRC* [1972] AC 661, Lord Reid cautioned against slavish adherence to the strict construction of words in interpreting tax statutes. His Lordship considered the alternative to the literal approach to interpretation, which, he said, was:

> [t]o consider the … general intendment of the provision … [m]ore recently courts have tended to give at least equal weight to more general considerations, because a strict literal interpretation has been found often to lead a result which cannot really been intended, and the object of statutory interpretation must be find what was the intention of the legislature.

[26] In the court's opinion, the common strand that runs through all the various purposive approaches to tax legislation is that they aim to make clear why tax is being levied in the way it is.

[27] The court agrees with the SCIT when they said in their deciding order:

> The purpose of Parliament in enacting section 14 and called it as a Transitional Provisions, is to seal the loophole during the transitional period of waiver year. This is in order to prevent companies from taking advantage of the transitional period by disposing its assets to its related company. If we agree with the Appellant, the true intention of the Parliament will be defeated. From the transaction, the Appellant's profit will be lower when the asset is disposed of later and therefore subject to less tax whereby the disposer's income from the transaction will be exempted as the asset was disposed of during the waiver year. The intention of the Appellant is clear, both the Appellant and TTDB are companies in the same group.
>
> Regarding the provisory part of section 14 ie, "unless it can be proven to the satisfaction of the Director General that the disposal was made in the ordinary course of its trade", the onus of proof shall be on the Appellant. There is no evidence adduced to that effect.

[28] The appellant contended that the words in s. 14 of the Act A1055 are simple, clear and ambiguous. Therefore, there is no reason to resort to the purposive approach in gleaning Parliament's intention. With respect, the court disagrees. As stated by Lord Griffiths in *Pepper (Inspector of Taxes) v. Hart* [1993] AC 593:

> The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.

[29] In *WT Ramsay Ltd v. IRC* [1982] AC 300, Lord Wilberforce had this to say:

> there may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should, be regarded.

[30] The court is of the considered opinion that what interpretation is to be given the words should depend upon the court's perception of the purpose of the provision and the context of the words, rather than on the dictionary meaning. The plain meaning approach to judicial interpretation is not necessarily the most apposite. The words hardly ever have a meaning in vacuo (in a vacuum). Words take on a meaning in association with other words in whose context they are used. Therefore, the interpretation of words almost invariably means doing more than finding mere dictionary or literal or plain meaning.

[31] In *State of Karnataka v. Appa Balu Ingale,* 1995 Supp (4) SCC 469, the Indian Court had this to say at para 34:

> Judge must be a jurist endowed with the legislator's wisdom, historian's search for truth, prophet's vision, capacity to respond to the needs of the present, resilience to cope with the demands of the future and to decide objectively disengaging himself/herself from every personal influence or predilections. Therefore, the judges should adopt purposive interpretation of the dynamic concepts of the Constitution and the Act with its interpretative armoury to articulate the felt necessities of the time.

[32] Purposive interpretation or construction has found its root to our jurisprudence too. In the case of *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265, Gopal Sri Ram JCA (as he then was) had this to say at p. 299:

> In my judgment s. 17A has no impact upon the well established guidelines applied by courts from time immemorial when interpreting a taxing statute. Section 17A and these guidelines co-exist harmoniously for they operate in entirely different spheres when aiding a court in the exercise of its interpretive jurisdiction. The correct approach to be adopted by a court when interpreting a taxing statute is that set out in the advice of the Privy Council delivered by Lord Donovan in *Mangin v. Inland Revenue Commissioner* [1971] AC 739:
>
> > First, the words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices. As Turner J said in his (*albeit* dissenting) judgment in *Marx v. Inland Revenue Commissioner* [1970] NZLR 182 at 208, moral precepts are not applicable to the interpretation of revenue statutes.
> >
> > Secondly, "... one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption so to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used". (Per Rowlatt J in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64 at 71, approved by Viscount Simons LC in *Canadian Eagle Oil Co Ltd v. Regeim* [1945] 2 All ER 499, [1946] AC 119.
> >
> > Thirdly, the object of the construction of a statute being to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.
> >
> > Fourthly, the history of an enactment and the reasons which led to its being passed may be used as an aid to its construction.

[33] It would appear that it is in tax avoidance cases where the judges have been willing to take more robust approach. In this instant case, the appellant was incorporated on 5 April 1995 under the name of Rivera Projects Sdn Bhd up to year 1998. The appellant did not have any fixed assets as its stock. It is also important to take note that the accounting period of the appellant ended on 31 January every year.

[34] It is also interesting to note that the Sale and Purchase Agreement dated 25 January 1999 did not have any terms regarding payments and was also unsecured. Despite the fact that the purchase was without any terms of payment and conditions, the appellant created a third party charge on behalf of TTDB, the seller, to secure a RM30,000,000 credit facility from OCBC Bank (Malaysia) Berhad with the said property as a security.

[35] Looking at the facts above carefully, it would be reasonable to infer that the disposal of the said property from TTDB, ie, the holding company, to the appellant was merely a scheme to alter the tax position of both the appellant and its holding company, and this scheme was done by taking advantage of the loophole of the transitional period of waiver year for the YA 2000. Though on paper the said land had been sold to the appellant, in actual fact, the holding company (TTDB) still have the full control over the said land and this was evidenced by the fact that a third party charged was created by the appellant on behalf of TTDB to secure a credit facility of RM30,000,000 from OCBC.

[36] The loophole during the transitional period was the mischief that the Parliament intended to rectify by introducing s. 14 of Act 1055.

[37] The SCIT was correct when they ruled that the appellant had also failed to adduce any evidence to prove before them that appellant position falls under the proviso of s. 14 of the Act A1055 which says "unless it can be proven to the satisfaction of the director General that the disposal was made in the ordinary course of its trade".

[38] Concerning the second issue in this appeal ie, whether the respondent has correctly imposed penalties on the appellant under s. 113(2) of the ITA 1967, the court agrees with the SCIT that in the circumstances of the case, there is no reason for the

appellant to misinterpret s. 14 of the Act A1055. The penalties imposed are reasonable and within the limitation prescribed by s. 113(2) of the ITA 1967.

Conclusion

[39] Based on the reasons above stated, the appeal is dismissed with costs and the deciding order issued by SCIT is hereby affirmed.